



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PERDUE GRAIN AND OILSEED, LLC FOR CHESAPEAKE BULK GRAIN TERMINAL Registration No. 60519

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Perdue Grain and Oilseed, LLC, regarding the Chesapeake, Virginia, bulk grain terminal, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the Perdue Grain facility located at 501A Barnes Street in Chesapeake, Virginia, permitted for the operation of a grain elevator terminal.
5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
7. "Perdue Grain" or "Chesapeake Bulk Grain Terminal" means Perdue Grain and Oilseed, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Perdue Grain is a "person" within the meaning of Va. Code § 10.1-1300.
8. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 Chapters 10 through 80.
9. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. "2008 Permit" means the State Operating Permit to modify and operate a grain elevator terminal, which was issued under the Virginia Air Pollution Control Law and the Regulations to Perdue Grain on February 11, 2008, and which was superseded on February 19, 2009.
11. "2009 Permit" means the State Operating Permit to modify and operate a grain elevator terminal, which was issued under the Virginia Air Pollution Control Law and the Regulations to Perdue Grain on February 19, 2009.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Perdue Grain owns and operates the Facility in the City of Chesapeake, Virginia, for the bulk storage of grain.
2. Perdue Grain operated under the 2008 Permit issued for the installation and operation of various equipment and for other operations involved in the loading, unloading and storage of grain in bulk. The 2008 Permit included a Shanzer grain dryer.

3. On November 3, 2008, TRO staff ("staff") inspected the Facility for conformity with the requirements of the Virginia Air Pollution Control Law, the 2008 Permit, and the Regulations. Staff observed construction activity in the vicinity of the Shanzer grain dryer. A Perdue Grain representative stated that Perdue Grain intended to add a second Shanzer grain dryer ("second dryer") at the same location in order to improve dryer efficiency. Staff reminded the Perdue Grain representative that a permit would be required from the Department before construction of the second dryer could begin as it was not included in the 2008 Permit.
4. On November 24, 2008, the Department received a "Form 7" air permit application from Perdue Grain to reflect the installation of the second dryer. A review of the air permit application by the Department air permitting staff revealed that an air permit was required for the second dryer. DEQ notified Perdue Grain to that effect by letter dated December 17, 2008.
5. On February 19, 2009, DEQ issued Perdue Grain the 2009 Permit, which superseded the 2008 Permit, authorizing, among other things, the construction and operation of the second dryer.
6. On February 27, 2009, DEQ received notification from Perdue Grain that construction of the second dryer had begun on December 15, 2008.
7. 9 VAC 5-80-1120(A) of the Regulation provides that no owner or other person shall begin actual construction, reconstruction, or modification of any stationary source without first obtaining from the Board a permit to construct and operate or to modify and operate the source.
8. On March 30, 2009, based on the inspection and follow-up information, the Department issued a Notice of Violation to Perdue Grain for the alleged violations described in paragraphs C.3 through C.7 above.
9. A representative of Perdue Grain responded to the NOV by electronic mail dated April 14, 2009, which stated that: (a) what was being "constructed" at the time of the November 3, 2008, DEQ inspection was the foundation and underpinnings for the second dryer and not the dryer itself; (b) Perdue Grain did not think that that activity triggered a requirement to obtain a air permit; and (c) in any event, the timing of the construction of the dryer foundation had been dictated by the availability of the construction crew provided by the manufacturer of the dryer, which is headquartered in Iowa. The response noted further that Perdue Grain has implemented a project review process to prevent a recurrence.
10. Based on the results of February 11, 2009, inspection and the documentation submitted on November 24, 2008, February 27, 2009, and April 14, 2009, the Board concludes that Perdue Grain has violated 9 VAC 5-80-1120(A) as noted in paragraph C.7 above.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Perdue Grain, and Perdue Grain agrees to pay a civil charge of \$8,190 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Perdue Grain shall include its Federal Employer Identification Number (20-5178848) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Perdue Grain for good cause shown by Perdue Grain, or on its own motion pursuant to the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Perdue Grain admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Perdue Grain consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Perdue Grain declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to

judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Perdue Grain to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Perdue Grain shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Perdue Grain shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Perdue Grain shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Perdue Grain intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Perdue Grain. Nevertheless, Perdue Grain agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

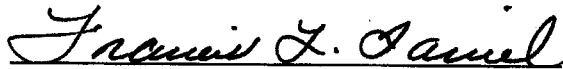
a. Perdue Grain petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Perdue Grain.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Perdue Grain from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Perdue Grain and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Perdue Grain certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Perdue Grain to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Perdue Grain.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Perdue Grain voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9<sup>th</sup> day of July, 2009.



Francis L. Daniel, Regional Director  
Department of Environmental Quality

Perdue Grain and Oilseed, LLC, voluntarily agrees to the issuance of this Order.

Date: 7/7/09 By: John J. Cassidy VP  
(Person) (Title)  
Perdue Grain and Oilseed, LLC

Commonwealth/State of Maryland  
City/County of Wicomico

The foregoing document was signed and acknowledged before me this 7<sup>th</sup> day of July, 2009, by John J. Cassidy who is Vice President of Perdue Grain and Oilseed, LLC, on behalf of the company.

M. Kathleen Rowe  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: October 11, 2009

Notary seal: